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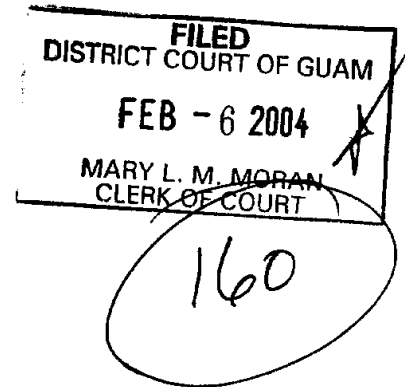
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Continental Micronesia, Inc.

dba Continental Micronesia

and Continental Airlines, Inc.



IN THE DISTRICT COURT OF GUAM

TONY H. ASHTIANI,

Plaintiff,

vs.

CONTINENTAL MICRONESIA, INC. dba
CONTINENTAL MICRONESIA and
CONTINENTAL AIRLINES, INC.,

Defendants.

CIVIL CASE NO. CIV02-00032

**DEFENDANT CONTINENTAL
MICRONESIA, INC.'S REPLY IN
SUPPORT OF MOTION TO STRIKE
DECLARATION OF TONY ASHTIANI
AND EXHIBIT 56 FILED JANUARY 9,
2004**

Plaintiff Tony H. Ashtiani's Opposition to Defendant Continental Micronesia, Inc.'s Motion to Strike his Declaration and Exhibit 56, which declaration and exhibit were filed on January 9, 2004, provides no sustainable basis for the Court to consider either document. The Declaration and Exhibit 56 sought to introduce additional evidence pertaining to Ashtiani's Partial Motion for Summary Judgment and his opposition to Continental's Motion for Summary Judgment. However, he introduced such evidence almost a month after the hearing on the summary judgment motions were held before the Court. The Declaration and Exhibit 56 were therefore untimely under Federal Rule of Civil Procedure 56(c), which requires that affidavits be served prior to the day of the hearing on a motion for summary judgment.

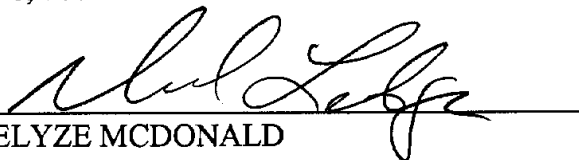
Ashtiani's Opposition insists that the Court should not engage in technicalities to exclude evidence. Ashtiani, however, does not contest the fact that Exhibit 56 remains unauthenticated, and thus inadmissible. Ashtiani's Declaration, while stating that he has "personal knowledge" of Exhibit 56, does not state how he has personal knowledge of the document. As discussed in Continental's Motion for Summary Judgment (filed Nov. 21, 2003), Ashtiani did not show up for work on June 19, 2001 (a fact which Ashtiani does not dispute), the date of Exhibit 56. Ashtiani does not provide any declaration from any person with personal knowledge of that document.

Moreover, Ashtiani does not contest the fact that he failed to seek permission or leave from the Court to submit this further evidence, one month after the hearing on the motions for summary judgment. He therefore provides the Court with no grounds upon which it should consider this exhibit.

The Court should strike the Declaration and Exhibit 56 from the record, on the grounds of untimeliness and as they are in violation of Federal Rule of Civil Procedure 56.¹

DATED: Hagåtña, Guam, February 6, 2004.

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dba Continental Micronesia
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¹ Ashtiani's Opposition also engages in further discussion into the merits of his case. See Opp'n at 6-9. Ashtiani raises these arguments far after the summary judgment motions have been filed and argued before the Court. The Court should disregard Ashtiani's untimely rhetoric.